XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

मामला क्रमांक CRA NO.693 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (in Jail)	Budku alias Pardeshi Ram Sarthi, S/o Banmali Sarthi, aged about 30 years, resident of village Sarthipara, Janjgir, District: Janjgir-Champa, C.G.
		- Versus -
	RESPONDENT:	State of Chhattisgarh, through P.S. Akaltara, District: Janjgir-Champa, Chhattisgarh

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

4-7-2007:-

Shri V.P. Gupta, counsel for the appellant.

Shri G.D. Waswani, Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais.*

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19th April, 2002 passed by the Additional Sessions Judge, Janjgir, in S.T. No.14/2000 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Case of the prosecution, in brief, is that on 9-11-99 at about 1 p.m. accused Budku @ Pardeshi Ram along with his wife Chitrarekha was present in the house of Looribai, mother of Chitrarekha, at that time, the accused attacked the deceased with axe and inflicted injuries as a result of which she died instantaneously in the kitchen of the house of Looribai. Looribai was Sarpanch of village Panorapara Budgahan. Merg intimation Ex.-P/2 was given by Looribai in the Police Station Akaltara, based on that first information report Ex.-P/1 was registered. The Investigating Officer left for place of occurrence, after giving notice Ex.-P/3 to the panchas, prepared inquest Ex.-P/4 on the body of Chitrarekha. The clothes of Chitrarekha were seized under Ex.-P/8. The accused, while in the police custody, gave memorandum Ex.-P/10 regarding place where he kept axe, in pursuance of that, axe was seized under Ex.-P/13. The body of deceased Chitrarekha was sent for postmortem to the Community Health Centre, Baloda where Dr. Kalpana Chachane conducted postmortem on the body of the deceased, prepared postmortem report Ex.-P/16 and opined that cause of death was haemorrhage due to injuries. Site plan Ex.-P/19 was prepared by the Investigating Officer.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

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In order to establish the charge against the accused, the prosecution examined 20 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. He stated that witnesses are deposing against him on the saying of Looribai. He further stated that murder of Chitrarekha was committed by Vijay Satnami. He has been falsely implicated by his mother-in-law.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of deceased Chitrarekha. In view of the evidence of Looribai before whom Chitrarekha made oral dying declaration that the accused had attacked her with axe & inflicted injuries and evidence of PW-11 Dr. Kalpana Chachane, who conducted postmortem on the body of the deceased and stated that on 10-11-99 she conducted postmortem, there were 3 incised wounds, one lacerated wound, 5th injury was on the neck, cause of death was shock as a result of haemorrhage and injuries sustained by her, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant argued that PW-1 Aandha, grandfather of the deceased, was

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present and his eyesight was weak, he was not in a position to see the person who attacked Chitrarekha, therefore, his evidence cannot be believed. As far as evidence of Looribai is concerned, he argued that at the time of incident she was at the pond and her evidence to the effect that Chitrarekha made oral dying declaration before her cannot be believed because same is not corroborated by evidence of any other independent witness. The accused/appellant has been falsely implicated in the crime.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence. As far as evidence of PW-1 Aandha is concerned, he has stated that at the relevant time deceased and her husband were present in the house. In cross-examination, he has admitted that his eyesight is weak, therefore, sometimes he is unable to identify family members but he is able to identify the person by hearing voice of a person. On that day, he heard voice of his granddaughter that she was saying to her husband not to attack her. PW-17 Kedarnath has stated that PW-1 Aandha informed him that Chitrarekha has been murdered. He has further stated that son-in-law Pardeshi was in the house. PW-4 Kheekh Bai, neighbour of Looribai, has stated that on the fateful day at about 1 p.m. she was at her residence. She heard cries from the house of Looribai. On hearing cries, she came out of her house in the kitchen garden and saw that the accused was

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running away from the back side of the house of Looribai, at that time, he was wearing full black pant and he was not wearing any shirt or baniyan. Moreover, the accused himself has stated that on the fateful day he came to the in-laws' house in order to help them for agricultural operations. PW-2 Looribai has stated that on the fateful day she along with Chitrarekha, her son-in-law Pardeshi, accused/appellant and her father-in-law were in the house. After plastering the courtyard, her daughter and son-in-law went to pond for taking bath. However, they returned after taking bath. Thereafter, her son-in-law asked her that she should also go and take bath, therefore, she left for pond for taking bath. In the meantime, PW-17 Kedarnath came and informed her about commotion towards her house, therefore, she returned back from the pond without taking bath. When she came to her house, she saw Chitrarekha lying in a pool of blood in the kitchen. There were injuries on her body. She enquired from Chitrarekha as to who has inflicted injuries on her, on which Chitrarekha informed that the accused has attacked her. When she further enquired as to why he has attacked her, Chitrarekha said that when she went to pond for taking bath, she was talking to Vijay, therefore, the accused suspected her fidelity and he attacked her. There was a lot of blood splashed on the ground where body of Chitrarekha was lying. Therefore, in view of the evidence of these witnesses, presence of the accused in the house is established. PW-2 Looribai just before the incident left the house for taking bath, her daughter Chitrarekha and accused were in the house, thereafter the accused

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was seen while running away from the house of Looribai by PW-4 Kheekhbai. The accused has not explained anything that why he was running away from the house. He has taken defence in his statement that in fact, Vijay attacked and caused death of Chitrarekha. But, he has not stated that when Vijay was attacking, then why he had not protected Chitrarekha, he has not explained that circumstance. On the contrary, as per established fact, he ran away from the house and this conduct of the accused also establishes his involvement in the crime in question.

Now, coming to the oral dying declaration made by the deceased before her mother, PW-2 Looribai has stated that when she returned and enquired from her daughter as to who has attacked her, Chitrarekha replied that Pardeshi Ram has attacked her. On further enquiry, she said that when she along with her husband went to take bath in the pond, she had talk with Vijay, therefore, her husband was suspecting her fidelity and that is why he has attacked her with axe. In cross-examination, defence has not been able to elicit anything which falsifies or demolishes the above evidence. From circumstantial evidence the above dying declaration gets corroborated because the accused was in the house. He ran away and he has not explained when Vijay attacked Chitrarekha, then why he has not protected his wife and ran away. From the above circumstances dying declaration made by the deceased stands corroborated and evidence of Looribai regarding making dying declaration by the deceased before her that the accused was author of the injuries is established. Evidence of

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Looribai inspire confidence of the Court that Chitrarekha made oral dying declaration before this witness. Moreover, axe and Chappal of the accused were seized from him. As per the serologist report Ex.-P/27 Chappal of the accused and axe, weapon of offence, were found stained with human blood. Therefore, from the above oral dying declaration and circumstantial evidence involvement of the accused in the crime in question is established beyond reasonable doubt.

For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused under Section 302 of the I.P.C.

In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge